

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to railroad transportation and safety and providing an opportunity for public comment

The Department of Transportation hereby proposes to amend Chapter 800, “Items of General Application for Railroads,” Chapter 810, “Railroad Safety Standards,” and Chapter 813, “Close-Clearance Warning Signs Along Railroad Tracks,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12, 327F.13, 327F.39 and 327G.24.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 307.26, 321.449A, 327C.2, 327C.4, 327C.38, 327C.41, 327F.13, 327F.39 and 327G.24.

Purpose and Summary

The proposed amendments to Chapter 800 correct a due date for annual reports, update the adoption date of a federal regulation, and provide a source for federal citations. The following list further explains the amendments to the chapter:

- Item 1 changes the due date for railroad annual reports from “no later than March 31” to “on or before April 1,” which makes the deadline in subrules 800.4(1) and 800.4(2) consistent with the reporting deadline railroads must meet under 49 Code of Federal Regulations (CFR) Part 1241. This item also corrects the implementation sentence for rule 761—800.4(327C) by striking Iowa Code sections 327C.28 and 327C.43 because they are unnecessary.
- Item 2 adopts the current CFR dated October 1, 2017, for 49 CFR Part 1152. Iowa Code section 327G.24 requires the Department to adopt rules consistent with the Surface Transportation Board’s Abandonment and Discontinuance of Rail Lines and Rail Transportation promulgated under United States Code, Title 49, and found in 49 CFR Part 1152.
- Item 3 adds new rule 761—800.21(327G) that provides sources where the federal citations may be found.

The proposed amendments to Chapter 810 update the adoption date of a federal regulation, provide a source for the federal citation, add a new rule which concerns worker transportation rest periods and make changes for clarity and consistency. The following list further explains the amendments to the chapter:

- Item 4 adopts the current CFR dated October 1, 2017, for 49 CFR Part 213. Iowa Code section 327C.4 requires the Department to inspect railroads’ track for safe operations. To accomplish this, the Department is a member of the Federal Railroad Administration’s (FRA) State Rail Safety Participation Program, which provides some benefits to states in training and technical proficiency in understanding and applying federal standards. The FRA’s track safety standards set out standards for track safety applicable to all railroads nationwide and are found in 49 CFR Part 213.
- Item 4 also adds new subrule 810.1(2) to provide sources where the federal regulations may be found and updates the rule’s implementation sentence by striking Iowa Code section 327C.2 because it is unnecessary.
- Item 5 amends rule 761—810.5(327F), which concerns heating systems within motor vehicles used to transport railroad workers. The amendments make the reporting procedure for a violation more consistent with new rule 761—810.6(327F) and revise the rule for clarity.

- Item 6 adopts new rule 761—810.6(327F). This new rule implements Iowa Code section 327F.39, which sets out the enforcement for a violation of railroad worker transportation company drivers' allowable hours of service. Certain railroads contract with railroad worker transportation companies to transport rail crews to and from work locations on a railroad, often to remote locations and at all hours. The railroad worker transportation companies normally use motor vehicles of a size smaller than those that fall under federal regulations for motor carriers. To cover this gap and ensure the safety of railroad workers being transported, Iowa Code section 321.449A establishes requirements for the allowable time that a railroad worker transportation company driver can be on duty and the driver's required rest periods, similar to federal regulations for motor carriers, and Iowa Code section 327F.39 prohibits both railroad transportation companies and railroad companies from requiring a driver to violate Iowa Code section 321.449A, and requires the Department to make, enter, and serve upon the owner of the motor vehicle an order as necessary to protect the safety of workers transported in the motor vehicle. To implement Iowa Code sections 321.449A and 327F.39, this new rule states that violations of Iowa Code section 321.449A are to be reported to the Department and describes how the Department will handle that report and any possible violation, including issuance of a decision and any necessary orders.

- Items 5 and 6 both provide that potential violations of motor vehicle requirements for the transportation of railroad workers may be investigated by the director of the Office of Rail Transportation or the director's designee, which may include peace officers in the Office of Motor Vehicle Enforcement. These provisions are intended to ensure the prompt and effective investigation of potential violations by recognizing that the Office of Rail Transportation has limited staff to conduct investigations and that peace officers serving as motor vehicle enforcement officers are well-positioned and trained to conduct inspections regarding motor vehicle equipment requirements and driver hours of service requirements.

The proposed amendment to Chapter 813 in Item 7 updates the Department's website reference to be consistent with changes made in other Department chapters. The Department's main website address is used instead of a more specific link that may change.

Proposed federal regulations are published in the Federal Register (FR) to allow a period for public comment, and after adoption, the final regulations are published in the FR. To ensure the consistency required by statute, the Department adopts the specified parts of 49 CFR as adopted by the Surface Transportation Board and the FRA.

The following list provides a specific description of the amendments to the federal regulations that have become final and effective from September 30, 2016, to October 1, 2017, and that affect 761—Chapters 800 and 813:

Amendment to the Surface Transportation Board Abandonment Regulations

Part 1152 (FR Vol. 82, No. 127, Pages 30997-31008, 07-05-2017)

This final rule amends the Surface Transportation Board's regulations to change its rules pertaining to offers of financial assistance to improve the process and protect it against abuse. The rule amendment requires a party making an offer of financial assistance (purchase or subsidy) during a railroad abandonment proceeding to formally express intent of an offer and prove itself preliminarily financially responsible. Effective date: July 29, 2017.

Amendment to the FRA's Track Safety Standards

Part 213 (FR Vol. 82, No. 62, Pages 16127-16136, 04-03-2017 and FR Vol. 82, No. 70, Page 17765, 04-13-2017)

Both final rules amend the civil penalties for a violation of a federal railroad safety law, FRA safety regulation or order as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. Effective dates: April 3, 2017, and April 13, 2017.

Fiscal Impact

The fiscal impact cannot be determined. The federal regulations proposed to be adopted by this rule-making action were subject to fiscal impact review by either the FRA or the Surface Transportation Board when enacted and were determined not to be cost-prohibitive.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 15, 2018. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Strategic Communications and Policy
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

A public hearing to hear requested oral presentations will be held as follows:

May 17, 2018	Department of Transportation
10 a.m.	Administration Building
	First Floor, South Conference Room
	800 Lincoln Way
	Ames, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 761—800.4(327C) as follows:

761—800.4(327C) Annual reports.

800.4(1) A railroad company submitting an annual report to the Surface Transportation Board under 49 CFR Part 1241 shall submit a copy of this report to the department ~~no later than March 31~~ on or before April 1 following the close of the calendar year. Included with this report shall be a “State Statistics” report which shall include the following: annual data on additions and deletions of mileage within the state; mileage operated within the state at the end of the year; railway operating revenues earned within the state; statistics on rail line operations within the state including locomotive unit-miles, car-miles and ton-miles; revenue freight carried within the state by commodity class; and a freight density map showing gross ton-miles for the railroad company’s system within the state.

800.4(2) A railroad company not required to submit an annual report to the Surface Transportation Board under 49 CFR Part 1241 shall submit an annual report to the department on Form 010030 ~~no later than March 31~~ on or before April 1 following the close of the calendar year.

This rule is intended to implement Iowa Code sections ~~327C.28, 327C.38, and 327C.41~~ and 327C.43.

ITEM 2. Amend subrule 800.20(1) as follows:

800.20(1) 49 CFR Part 1152 contains the regulations governing the abandonment and discontinuance of railroad lines and rail transportation under 49 U.S.C. 10903 et seq. This part also contains the regulations and procedures for the acquisition or use of railroad rights-of-way proposed for abandonment for interim trail use and rail banking pursuant to 16 U.S.C. 1247(d).

For the purpose of this rule, this part is adopted as of October 1, ~~2002~~ 2017.

ITEM 3. Adopt the following new rule 761—800.21(327G):

761—800.21(327G) Federal citations. Copies of the federal code or regulations cited in this chapter are available from the state law library or online at www.gpo.gov.

This rule is intended to implement Iowa Code section 327G.24.

ITEM 4. Amend rule 761—810.1(327C) as follows:

761—810.1(327C) Track safety standards.

810.1(1) Standards. The department adopts the railroad track safety standards contained in 49 CFR Part 213 (October 1, ~~2002~~ 2017).

810.1(2) Obtaining copies of regulations. Copies of the federal regulations are available from the state law library or online at www.gpo.gov.

This rule is intended to implement Iowa Code sections 307.26, ~~327C.2~~, and 327C.4.

ITEM 5. Amend rule 761—810.5(327F) as follows:

761—810.5(327F) Worker transportation motor vehicle equipment.

810.5(1) No change.

810.5(2) Report procedure.

a. A person shall report an alleged violation in writing to the responsible railroad company at its corporate headquarters.

b. If within 30 days the railroad company does not respond or if the response is unsatisfactory, the person may report the alleged violation to the department at the following address: Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

b. c. The report ~~shall be written and~~ shall include the date, time, weather conditions and all facts pertinent to the alleged violation. The report shall also include a copy of the railroad’s response or, if the railroad failed to respond, proof of the date the report was submitted to the railroad.

e. d. The ~~department~~ director of the office of rail transportation or the director’s designee may request additional information from the person submitting the report, the railroad worker transportation company or the railroad.

e. The director of the office of rail transportation or the director's designee, which may include peace officers in the office of motor vehicle enforcement, may investigate the alleged violation.

f. The director of the office of rail transportation or the director's designee shall issue a decision within 20 days after the report is received by the department of receipt of the report or 20 days after receipt of the requested additional information is received. The decision may include any order as necessary to enforce the requirements of Iowa Code section 327F.39, as set forth in Iowa Code section 327F.39(6).

g. The department shall notify the person and the railroad of the decision, which is the final decision of the department.

h. The decision is final agency action.

This rule is intended to implement Iowa Code section 327F.39.

ITEM 6. Adopt the following **new** rule 761—810.6(327F):

761—810.6(327F) Worker transportation rest periods.

810.6(1) Requirements. A railroad worker transportation company and railroad worker transportation company driver shall comply with the rest period requirements of Iowa Code sections 321.449A and 327F.39(5).

810.6(2) Report procedure.

a. A person shall report an alleged violation in writing to the department at the following address: Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

b. The report shall include the date, time, circumstances and any evidence of an alleged violation, and the name and contact information of the driver employed by the railroad worker transportation company or the railroad worker transportation company alleged to require a driver to violate the provisions of Iowa Code section 321.449A or 327F.39(5).

c. The director of the office of rail transportation or the director's designee may request additional information from the driver, railroad worker transportation company or railroad.

d. The director of the office of rail transportation or the director's designee, which may include peace officers in the office of motor vehicle enforcement, may investigate the alleged violation.

e. The director of the office of rail transportation or the director's designee shall issue a decision within 60 days of receipt of the report or 60 days after receipt of the requested additional information. The decision may include any order as necessary to enforce the requirements of Iowa Code section 327F.39, as set forth in Iowa Code section 327F.39(6).

f. The department shall notify the driver and the railroad worker transportation company of the decision.

g. The decision is final agency action.

This rule is intended to implement Iowa Code sections 321.449A and 327F.39.

ITEM 7. Amend subrule 813.10(4) as follows:

813.10(4) Form 291303 is available on the department's ~~Internet Web site~~ website at <http://www.iowadot.gov/forms/index.htm> www.iowadot.gov or from the office of rail transportation.